Supreme Court, U.S.
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No. 98-1658

In the Supreme Court of the United States

MARY L. HELMS, ETC., ET AL., PETITIONERS

v.

CECIL J. PICARD, SUPERINTENDENT OF LOUISIANA PUBLIC EDUCATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE SECRETARY OF EDUCATION

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QUESTION PRESENTED

Whether the special-education services program operated by the Jefferson Parish, Louisiana, Public School System, pursuant to La. Rev. Stat. Ann. § 17: 1941 (West 1982 & Supp. 1999), contravenes the Establishment Clause.

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Petitioners challenge, under the Establishment Clause of the First Amendment, the special-education program operated by the Jefferson Parish, Louisiana, Public School System (JPPSS), pursuant to La. Rev. Stat. Ann. § 17:1941 (West 1982 & Supp. 1999). This challenge was raised in a complaint that challenged the application by the JPPSS of several other state and federal education programs, including the program that is now found at Title VI of the Elementary and Secondary Education Act of 1965, 20 U.S.C. 7301-7373. The challenge to Title VI is the subject of two other petitions for a writ of certiorari that are currently pending, see *Mitchell* v. *Helms*, No. 98-1648, and *Picard* v. *Helms*, No. 98-1671 (both filed Apr. 13, 1999).

In their complaint challenging the JPPSS special-education program, petitioners did not make any claim that the federal government was involved in the administration of that program. See Second Amended Complaint ¶¶ 8-30, 69. The district court's order declaring the special-education program unconstitutional and entering judgment in favor of petitioners on that issue did not enter any judgment or award any relief against any federal agency or officer. See Pet. App. 281a-282a, 284a. The federal government also did not brief the constitutionality of the Louisiana special-education program in the district court. After the district court entered a final judgment disposing of all the claims in this case, the state and local defendants and intervenors appealed from the district court's order declaring the special-education program unconstitutional; various other appeals and cross-appeals were also taken from other aspects of the district court's decision. The federal government participated in the court of appeals only as appellee, defending the constitutionality of Title VI, and did not address in its brief the constitutionality of the special-education program.

The court of appeals disposed of all the claims raised by petitioners in a single judgment, rejecting some and sustaining others (the latter are the subject of the certiorari petitions filed in Nos. 98-1648 and 98-1671). The Secretary of Education and Department of Education are therefore respondents to this petition in this

Court under the Court's Rule 12.6. Because we have not previously taken a position on the constitutionality of the Louisiana special-education program, however, we do not take a position in this Court on whether review should be granted on that issue.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

MAY 1999